

## Wellman, Julia (DEQ)

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**From:** Jane Myers [janeandrick@comcast.net]  
**Sent:** Wednesday, July 03, 2013 6:26 AM  
**To:** Wellman, Julia (DEQ)  
**Subject:** Curles Neck 13-113F

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Ms. Wellman,

I feel that the approval process thus far for the Curles Neck project to be misguided and poorly-informed.

Hopefully greater time will be taken to fully review the history of this project as well as the impacts it would have on existing fish populations and the public's right to have access to these surface waters.

The project claims to be about improving wildlife habitat. Whether there will be a **measurable** benefit to migratory waterfowl if this project is undertaken is unclear. Waterfowl habitat already exists. What is clear however is that there are three species of fish which have been nominated for listing on the endangered species list whose habitat will be further compromised by the disturbance and fortification of the existing levy.

I am also gravely worried about the regional if not global loss of tidal wetlands that this project will cause. Nothing in this project proposes to ensure that these tidal wetlands will not be impacted. *Nor are the assumed future impacts from global sea level rise appropriate for taking action in this instance or in this way.*

There was no attempt on the part of the applicant to come up with the least impactful alternative which would be to remove what is currently an "illegal" dam and restore the freshwater tidal estuary.

And lastly, the applicants have been asked to do a study of the effects of their project on fisheries at that location. My understanding is that they are not doing a baseline study to determine the "before" and "after" effects. So, how will it be possible to determine the impact of the project if data is only being collected after 3 years of the fortified levy and new dam being in place?

To summarize, I am opposed to this project. I am convinced that Curles Creek is state surface waters and that the levy which was built in the early 1960s is currently illegal.

Sincerely,

Jane Myers

(804)559-4238

**Wellman, Julia (DEQ)**

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**From:** George Little [gblittlejr@yahoo.com]  
**Sent:** Tuesday, July 02, 2013 11:05 PM  
**To:** Wellman, Julia (DEQ)  
**Subject:** Project # 13-113F - Curles Neck Farm Project

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Dear Ms. Wellman,

Project # 13-113F is in direct violation of 28.2-1200 of the Code of Virginia. It seeks to usurp the public's right to access the ungranted waters of the Commonwealth known as Curles Creek. The Virginia Institute of Marine Science (VIMS) states that the installation of the wall will alter the function of this unique wetlands habitat along the shoreline by disrupting the natural processes of ground water exchange. VIMS also cites extremes in water quality parameters that can create migratory barriers to fish passage. They say such water quality variations can be expected around Curles Neck Swamp, because of the unnatural conditions created by the impoundment. This project proposes no benefit for the public or the environment.

Sincerely,  
George B. Little, Jr.  
10225 Turkey Island Road  
Richmond, VA 23231  
804-795-2461

## Wellman, Julia (DEQ)

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**From:** Pitstop29 [pitstop29@earthlink.net]  
**Sent:** Tuesday, July 02, 2013 9:27 PM  
**To:** Wellman, Julia (DEQ)  
**Cc:** Murphy, Michael (DEQ)  
**Subject:** DEQ Case 13-113-F Curles Neck Creek

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

03 July 13 Ms.

Julia Wellman DEQ Central Office, 6th Floor Office of Environmental Impact Review  
629 E .Main Street  
Richmond, VA 23219

RE: 13-113-F Army

Corps/Curles Neck Project/PCN-LLC  
Dear Ms. Wellman:

I would like to protest the denial of public access to the state-owned ungranted subaqueous lands known as Curles Neck Creek. This objection falls under the terms of DEQ's "Virginia Coastal Zone Projects," specifically in regards to the use of ungranted subaqueous lands.

The owner of the marsh that borders the creek claimed to have an 17th century "crown grant" from the king of England when he took the liberty of damming the mouth of this creek in 1969. He agreed to accept an "after the fact" permit from VMRC several years later, but never presented any acceptable evidence supporting his claim to the ownership of the creek waters and the subaqueous bottom. This land owner somehow convinced VMRC to let him deny public access to the creek once the mouth was fully dammed. ( See Code of Virginia 62.1-4 which states in part "because authorization to use water areas based on Title 62.1 cannot interfere with the citizens' rights of common use of the same property" [Michie, 1987]).

In 2013 subsequent owners of Curles Neck property ( aka: PCN, LLC) applied for a permit from VMRC for an extention to the dam at Curles Neck Creek. Without presenting any acceptable evidence of a "crown grant," these owners received VMRC's conditional permit that continued the legally baseless denial of public access to a creek that VMRC still contends is "ungranted" and belongs to the Commonwealth.

DEQ is obligated to ensure that an easement for public access be required for this project to be permitted.

Sincerely,

William Rhoades  
5286 Pickett River Drive  
Henrico, Virginia 23231-8743

## Wellman, Julia (DEQ)

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**From:** Joneswd2 [joneswd2@aol.com]  
**Sent:** Wednesday, July 03, 2013 9:05 PM  
**To:** Wellman, Julia (DEQ)  
**Subject:** Curles Neck Creek Fresh Water Tidal Estuary Restoration

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**This is very important  
!!!!**

Please hold a public hearing since the VMRC refused to follow the staff's recommendation and you allege that action was not in accord with state law, regulations, or state coastal zone consistency policies because there is no evidence in the application of actual tidal rise now or in some possible future scenario.

The public notice fails to mention that all Virginia citizens' vouchsafed rights under Virginia law to free access to the tidal waters and wetlands for fishing, shellfishing, collection of vertebrates, birdwatching, recreational activities, income producing activities such as collection of natural materials for arts and crafts, live stakes, and plant propagules.

The public notice **fails** to mention any of the mitigation measures proposed. In point of fact, inadequate mitigation is proposed which does not account for actual avoidance and minimization of impacts to the tidal systems proposed for

impacts since the cyclical flushing by tidal action (in impact wetlands) does not in any way equal or exceed the functional values of existing tidal wetlands that will be permanently inundated by freshwater for duck hunting and other private uses, which are illegally terminated from all Commonwealth Citizens by granting the DEQ permit; in essence turning a public resource into a private resource on the basis of false science and unproved future estimates of sea level rise. It is patently absurd that an applicant can seek a permit to "save" a swamp from itself by impounding a tidal system, forever cutting off all tidal flushing to it, and then attempting to set up a private game preserve by hoodwinking dull-witted newspaper reporters and state and federal regulators who know better, but wont stand on the regulatory high ground to denounce the permit application as the utter fraud that it is.

The Public Notice totally mis-characterizes the order and magnitude of impacts on fisheries, there is no assessment of threatened and endangered species, and anadromous fishes.

The published Public Notice's stated purpose is also grossly mis-characterized. The actual purpose and need is to:

"exchange Curles Neck Swamp wetlands on the project site with freshwater and cut off that "regulated" freshwater from ALL tidal influence". This action is not in accord with existing coastal policy or with the guidelines for protection of EXISTING wetlands under DEQ regulations, VMRC regulations, and Chesapeake Bay Preservation Act regulations and policies. The waters of the proposed wetlands will be no longer be allowed to twice daily flush its sediments and nutrients into the James River, with the action within EXISTING guts and drains which afford sediment transport, tidal flushing, nutrient transformation, and other critical functions and values. These guts and drains are proposed to be FILLED (permanent loss of area and functions/values). The long term impacts to James River are indeterminate. Flooding impacts from a major flood of James River are undetermined and unanalyzed.

On the basis of factual error, proposed misappropriation of State vouchsafed rights of tidal access and free use, and clear error in the filed application materials, I request and demand a public hearing to require an examination of these identified deficiencies.

Thank you,  
Wayland Jones  
4803 Wythe Ave.  
Richmond, Va

23226  
804-257-7223

## Wellman, Julia (DEQ)

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**From:** Jane Myers [janeandrick@comcast.net]  
**Sent:** Friday, July 05, 2013 2:57 PM  
**To:** Wellman, Julia (DEQ)  
**Subject:** Curles Neck 13-113F

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Ms. Wellman,

I wrote you previously but wanted to write again to clarify some points and make sure that you had my name, address, and phone number.

I am concerned about the VMRC refusing to follow staff recommendations regarding the Curles Neck application and I feel that their decision was not in accord with state law, regulations, nor consistent with state coastal zone policy in regards to making decisions about permitting due to possible sea level rise. Because of this I demand a public hearing.

The public notice fails to mention that all Virginia citizens' have vouchsafed rights under Virginia law to free access to the tidal waters and wetlands for fishing, shellfishing, collection of vertebrates, birdwatching, recreational activities, income producing activities such as collection of natural materials for arts and crafts, live stakes, and plant propagules. This permit denies me of that right.

The public notice also **fails** to mention any of the mitigation measures proposed which are quite severe. In my opinion, inadequate mitigation is proposed which does not account for actual avoidance and minimization of impacts to the tidal systems impacted by the project.

The impacted wetlands would normally be affected by cyclical flushing by tidal action. The creation and expansion of the proposed freshwater impound does not in any way equal or exceed the functional values of these existing tidal wetlands which will be permanently inundated by freshwater would this project be allowed.

Also, the public's right to access this wetland will be illegally terminated should this project be allowed if the DEQ permit is granted; in essence turning a public resource into a private resource on the basis of false science and unproved future estimates of sea level rise. It is patently absurd that an applicant can seek a permit to "save" a swamp from itself by impounding a tidal system, forever cutting off all tidal flushing to it, and then attempting to set up what would appear to be a private game preserve.

The Public Notice totally mis-characterizes the order and magnitude of impacts on fisheries and it is outrageous that there will be no pre-construction assessment of threatened and endangered species, and anadromous fishes.

The published Public Notice's stated purpose is also grossly mis-characterized. The actual purpose and need is to:

"exchange Curles Neck Swamp wetlands on the project site with **freshwater** and cut off that "regulated" freshwater from **ALL** tidal influence". This action is not in accord with existing coastal policy or with the guidelines for protection of EXISTING wetlands under DEQ regulations, VMRC regulations, and Chesapeake Bay Preservation Act regulations and policies.

The waters of the proposed wetlands will no longer be allowed to twice daily flush its sediments and nutrients into the James River, with the action within EXISTING guts and drains which afford



sediment transport, tidal flushing, nutrient transformation, and other critical functions and values. These guts and drains are proposed to be FILLED (permanent loss of area and functions/values). The long term impacts to James River are indeterminate. Flooding impacts from a major flood of James River are undetermined and unanalyzed.

On the basis of factual error, proposed misappropriation of State vouchsafed rights of tidal access and free use, and clear error in the filed application materials, I request and demand a public hearing to require an examination of these identified deficiencies.

Sincerely,

Jane Myers  
10388 Deer Oak Lane  
Mechanicsville, VA 23116  
804-559-4238

## Wellman, Julia (DEQ)

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**From:** Stephen Lake [smeadlake@gmail.com]  
**Sent:** Friday, July 05, 2013 4:04 PM  
**To:** Wellman, Julia (DEQ)  
**Cc:** boywhobuilds@yahoo.com  
**Subject:** Opposition to 13-113F

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Dear Ms. Wellmen:

While no longer a resident of Virginia, I was born and raised in Newport News. In the summer of 1969 my father moved our family to a house on Fishers Creek, a tidal saltmarsh fed by the James River. Along with my brothers and friends living along the creek, we fished, crabbed and generally lived on the creek all summer long.

During the early 70's my father became interested in preserving the fragile eco system that is Fishers Creek. His interest eventually led to his becoming chairman of the Wetlands Board in Newport News. One of the early projects he became involved with was the abatement of residential runoff into the creek-specifically the discharge of washing machine waste water. In 1974 the Virginia Institute of Marine Science or VIMS, conducted a survey of tidal saltmarshes. At the time of this survey they found Fishers Creek to have dangerous levels of phosphates and other chemical compounds. Through the efforts of the Wetlands Board the discharge of any and all waste water was stopped. In 1977 a follow on survey found Fishers Creek to be one of the healthiest in the state. The following paragraph is from the 1977 survey:

The marshes found within Fishers Creek have also remained undisturbed in spite of surrounding urban development. Saltmarsh cordgrass dominates this creek marsh system and as such the wetlands would be considered Type I, of the highest value to the marine environment.

While the Curles Neck Farm Project 13-113F involves a fresh water tidal estuary, the same concerns and impacts that would effect a saltwater tidal estuary such as Fishers Creek would apply. The damning of any tidal marsh will have tremendous negative impact on the health and viability of any marsh eco system. The threat to endangered species such as the Alewife and Blue Back Herring should be enough to halt this project. The prospect of damning it should cause great concern at all levels of state government.

I now reside in Rhode Island and can take great comfort in knowing that the Department of Environmental Management-or DEM-, goes to great lengths to protect the abundant and fragile marines ecosystems that help to define and provide great natural and economic value to the Ocean State.

Thank you for your consideration in this matter.

Regards,  
Stephen Lake  
25 Bourne St  
Bristol, RI 02809

## Wellman, Julia (DEQ)

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**From:** Stephen Lake [smeadlake@gmail.com]  
**Sent:** Friday, July 05, 2013 4:12 PM  
**To:** Wellman, Julia (DEQ)  
**Subject:** Fwd: Opposition to 13-113F

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

----- Forwarded message -----

**From:** <boywhobuilds@yahoo.com>  
**Date:** Thu, Jul 4, 2013 at 8:08 AM  
**Subject:** Fwd: Opposition to 13-113F  
**To:** Stephen Lake <smeadlake@gmail.com>

Sent from my iPad

Begin forwarded message:

**From:** boywhobuilds@yahoo.com  
**Date:** July 4, 2013 7:29:47 AM EDT  
**To:** "Julia.Wellmen@deq.virginia.gov" <Julia.Wellmen@deq.virginia.gov>  
**Subject:** Opposition to 13-113F

Attn. Julia Wellmen

I am writing in opposition to the Curles Neck Farm Project 13-113F. This project, on its face is clearly not consistent with the VCP. As noted by VIMS in their sworn testimony regarding this permit application, water quality would be harmed, and Curles Creek would be entirely impounded. At draw down eighty to ninety four percent of the aquatic environment is pumped out. This becomes a toxic lagoon, salinity rises, oxygen levels plummet and the water temperature soars. Fledgling fish of at least three Threatened species, Alewife, American Eel, and Blue Back Herring, are left fighting for survival in this poisonous lagoon. Furthermore this is supposed to be a fresh water tidal estuary with all the benefits of such a system. Please visit the Rice Center website and view their six minute video detailing the importance of freshwater tidal estuaries! By isolating these waters, declared on May 28 2013, to be state surface waters, by the VMRC we lose "tidal wooded wetlands" and replace them with an impounded swamp. How many species native to a tidal wetland will live here? The fact of this occurrence is attested to in the VIMS report.

This project is contrary to the initiatives undertaken by the state and National Marine Fisheries personnel at great expense to the state and federal government as noted by David O'Brien, under oath at the VMRC hearing.

This project is a de Facto and blatant usurpation of the constitutional rights of the citizens of the Commonwealth of Virginia. The state code is replete with declarations regarding the rights of the citizens to travel in, recreate in and enjoy the benefits of these waters for commerce and

pleasure!

This project makes no sense on any line of logic! The only thing that threatens what should be a highly productive freshwater tidal estuary here is the destructive hands of those seeking to kill this estuary with steel sheet pilings driven through its heart! The tide is the heart beat of the estuary! Please read the science.

Respectfully Brian Siff  
13423 Hanover Courthouse Rd.  
Hanover VA 23069  
804-347-1406

## Wellman, Julia (DEQ)

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**From:** Beth Sykes [bethsykes@gmail.com]  
**Sent:** Friday, July 05, 2013 4:43 PM  
**To:** Wellman, Julia (DEQ)  
**Subject:** I oppose the request by Williamsburg Environmental Group (WEG), on behalf of Mr. Tommy Pruitt, submitted a federal consistency certification (FCC) for the Curles Neck Farm Project in Henrico County.

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Dear Ms. Wellman,

I am in opposition to the request because of usurpation of the constitutional right to navigate state surface waters and because it will diminish water quality as noted by VIMS! Also it completely impounds Curles Creek, and adversely affects fish species which are threatened.

It is NOT consistent with the Virginia Coastal Zone Management Program (VCP) established pursuant to the U.S. Coastal Zone Management Act. The VCP SHOULD protect the quality of air, water or other natural resources in Virginia's coastal area for ALL TAXPAYERS and citizens.

The action was not in accord with state law, regulations, or state coastal zone consistency policies because there is no evidence in the application of actual tidal rise now or in some possible future scenario.

The public notice fails to mention that all Virginia citizens' vouchsafed rights under Virginia law to free access to the tidal waters and wetlands for fishing, shellfishing, collection of vertebrates, birdwatching, recreational activities, income producing activities such as collection of natural materials for arts and crafts, live stakes, and plant propagules.

The public notice fails to mention any of the mitigation measures proposed. In point of fact, inadequate mitigation is proposed which does not account for actual avoidance and minimization of impacts to the tidal systems proposed for impacts since the cyclical flushing by tidal action (in impact wetlands) does not in any way equal or exceed the functional values of existing tidal wetlands that will be permanently inundated by freshwater for duck hunting and other private uses, which are illegally terminated from all Commonwealth Citizens by granting the DEQ permit; in essence turning a public resource into a private resource on the basis of false science and unproved future estimates of sea level rise. It is patently absurd that an applicant can seek a permit to "save" a swamp from itself by impounding a tidal system, forever cutting off all tidal flushing to it, and then attempting to set up a private game preserve by hoodwinking dull-witted newspaper reporters and state and federal regulators who know better, but won't stand on the regulatory high ground to denounce the permit application as the utter fraud that it is.

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"exchange Curles Neck Swamp wetlands on the project site with freshwater and cut off that "regulated" freshwater from ALL tidal influence". This action is not in accord with existing coastal policy or with the guidelines for protection of EXISTING wetlands under DEQ regulations, VMRC regulations, and Chesapeake Bay Preservation Act regulations and policies. The waters of the proposed wetlands will be no longer be

allowed to twice daily flush its sediments and nutrients into the James River, with the action within EXISTING guts and drains which afford sediment transport, tidal flushing, nutrient transformation, and other critical functions and values. These guts and drains are proposed to be FILLED (permanent loss of area and functions/values). The long term impacts to James River are indeterminate. Flooding impacts from a major flood of James River are undetermined and unanalyzed.

On the basis of factual error, proposed misappropriation of State vouchsafed rights of tidal access and free use, and clear error in the filed application materials, I request and demand a public hearing to require an examination of these identified deficiencies.

Please contact me at your earliest convenience to explain the status of the project to me. Also, please put me on your notice list to be notified of all changes, meetings, etc . relating to this request.

Sincerely,

Elizabeth Cornell Sykes

3150 Ellwood Avenue

Richmond, VA 23221

804/306-3570